

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	MM Docket No. 93-215
Implementation of Sections of	)	
the Cable Television Consumer	)	
Protection and Competition Act	)	
of 1992: Rate Regulation	)	

**REPLY COMMENTS**

Pursuant to 47 C.F.R. §§ 1.415 and 1.421, Falcon Cable TV ("Falcon"),<sup>1</sup> by its attorneys, hereby files these reply comments on the Further Notice of Proposed Rulemaking portion of the Commission's Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 93-215, FCC 94-36, 9 FCC Rcd \_\_\_\_ (rel. Mar. 30, 1994).

In the Further Notice the Commission sought comment on what it termed an Upgrade Incentive Plan. The concept was to see whether the Commission should develop a permanent incentive plan for cable systems which would provide the impetus for substantial and meaningful upgrades of cable systems. The purpose of such a plan, as Falcon understands it, would be to provide some assurance of reasonable rates to subscribers while at the same time creating a profit incentive for cable operators to upgrade their systems and offer new services. The Commission had in mind

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<sup>1</sup>Falcon is a Multiple System Operator ("MSO") operating systems in 27 states with more than 1 million subscribers.

some form of social contract between the cable operator and its subscribers. At the same time, and in the same cost-of-service docket, the Commission provided a methodology for a streamlined cost-of-service showing for any "significant" rebuild. Falcon suggests that there is a middle ground which could accomplish all of the aims articulated by the Commission.

The Commission wants to develop a policy which permits the recovery of costs for the upgrading or rebuilding of plant and for the introduction of new services to subscribers. The streamlined cost of service approach will necessitate extensive regulatory oversight by the local franchising authority and/or the Commission every time there is a rebuild. Falcon believes that this process will slow down the planning for rebuilds and will not have the desired incentive creating effect. On the other hand, the upgrade incentive plan proposal, as proposed by the Commission, contains far too many vaguely defined concepts and goals. Falcon suggests that the Commission could adopt a streamlined cost recovery system for rebuilds which would be easy to administer, would provide certainty to cable systems and regulator alike, and would create the desired incentives without an undue burden being placed on the cable subscriber. This cost recovery methodology would be in addition to the going forward methodology now being reformulated by the Commission to create realistic incentives to add programming services to regulated tiers.

Obviously, such an optional upgrade methodology should be available for all system upgrades which are begun or are completed after the date of adoption of this plan by the Commission. However, Falcon also suggests that the plan should have a retroactive applicability as well. The Commission froze rates for all cable systems starting on April 5, 1993 and ending on May 15, 1994. Any rebuild which had been commenced prior to that time has never been reflected in cable system rates. Moreover, the Commission's revised benchmark methodology requires cable systems to discount from their September 1992 rates. Thus, upgrades in process or recently completed as of that date have also never been reflected in cable system rates. Therefore, Falcon submits that any cable operator who completed or began a rebuild in 1992 should be eligible for this streamlined upgrade incentive plan upon a representation that it did not increase its rates prior to September 1992 to reflect the cost of the upgrade.

The first element of a streamlined cost recovery plan would be to define minimum technical specifications for an eligible upgrade. Falcon suggests that the minimum bandwidth for such an upgrade be 750 MHz, or at least 550 MHz capable of upgrade to 750 MHz capacity. In addition, the upgrade should consist of a fiber to the node configuration with no more than 2,000 homes per node. The upgraded system should be available to all subscribers and should also be two-way capable. Finally, the cable system should be required to provide, at no cost, drops to all public schools within 125 feet of activated network cable plant. These minimum

technical requirements should be relaxed in two situations. Eligible retroactive rebuilds commenced in 1992 should not have to meet the 750 MHz requirement. This technology was not widely available at that time. Falcon suggests that a 450 MHz standard would be appropriate in this circumstance. In addition, small cable systems should be held to a lesser standard in order to provide an incentive to upgrade in less economically attractive situations.

Falcon suggests that the Commission should develop standardized information on the cost of constructing a mile of plant meeting the minimum technical requirements. The reason for this suggestion is that otherwise even a so-called streamlined cost recovery methodology will become enmeshed in disputes over costs. Evaluation of cost showings would be significantly eased if the Commission had a safe harbor standard. This information could be updated on an annual basis via an ongoing sampling or surveying of the cable industry. Cable systems wishing to avail themselves of the streamlined upgrade cost recovery methodology would be required to state their cost of construction. If the cost incurred by the cable operator is less than the standardized cost information published by the Commission the cable operator's showing would be accepted on its face. Cable systems would be free to make a special showing to the Commission that their particular cost of construction is greater. However, it is anticipated that the bulk of applications for a cost recovery rate increase would come within this safe harbor.

Cable systems would be able to start to recover their costs after construction has been completed and they have certified to the Commission the cost of their construction and that the required minimum technical specifications have been met. Once the cost of upgrades have been certified, systems may then begin to recover these costs through incremental rate increases. Falcon suggests that these certified costs should be amortized over a period of seven to eight years. This figure is a combination of the average expected physical life of plant upgrades, the average time period for technical obsolescence, and the useful depreciable life of plant under generally accepted accounting principles. This is not only a fair amortization period, but also the adoption of a fixed standard would ease the administrative burden for all parties.

A simple mechanism for allocating certified costs between regulated and unregulated services is the next element of the plan. There are a number of ways in which this could be done, e.g., revenues or time usage, but Falcon suggests that a bandwidth standard might be the easiest to administer. Thus, the percentage of bandwidth devoted to regulated services would reflect the percentage of the upgrade costs which could be utilized in calculating an increase in subscriber rates for regulated services. Falcon suggests that it would be reasonable to have as much as 75% of upgrade cost allocated to regulated services. This is based on the relative use rules established in

the Computer III proceeding.<sup>2</sup> There are tangible benefits to the subscribers to regulated services which flow from a system upgrade. Enhanced bandwidth leads to more programming, thus increasing choice. The quality of video reception is improved and service becomes more reliable. Moreover, the nodal configuration, together with the increased bandwidth, will permit zoned programming which allows for increased diversity. Finally, a system rebuilt in state-of-the-art fashion is necessary to provide access to the national information infrastructure ("NII").<sup>3</sup> The goal of constructing the NII can be met more quickly and easily if there is a contribution from the regulated rate base. The Commission could adopt a procedure which would increase or decrease the allocation of costs over time except where the rebuild is required by a franchising authority. In the latter case, the original allocation percentage should be left in place for the duration of the amortization period. The allocation could be reviewed every two or three years.

Another matter which is worthy of the Commission's attention relates to the regulation of subscriber premises equipment. A significant part of most system upgrades is the deployment of new equipment in the subscriber's home. Because equipment charges are unbundled from service charges, even the adoption of a streamlined cost recovery method as outlined above will leave the

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<sup>2</sup>See 47 C.F.R. § 64.901(b)(4).

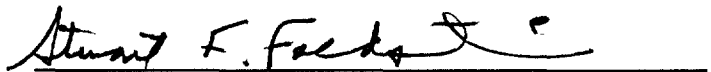
<sup>3</sup>See Attachment 1 for a comparison of coaxial and fiber technology.

calculation of charges for new subscriber equipment to be done under the Commission's Form 1205 methodology. Under this procedure, rates for the existing pool of subscriber equipment can only be changed annually and then only after the franchising authority has approved of the new rate. This can take several months. Moreover, some franchising authorities are contending that the annual adjustment procedure prohibits establishment of rates for newly-introduced subscriber equipment mid-year. The Commission should revisit and solve these regulatory lag problems. It would be anomalous indeed if a cable operator could increase its service rates to reflect the costs of a rebuild immediately upon completion of that rebuild and then have to wait for a period of a year or more before its equipment charges could reflect the increased costs of the subscriber premises equipment.

Falcon suggests that the FCC should revisit the regulatory responsibility over such equipment so long as the cable operator provides a basic converter if one is needed for the receipt of basic service. All other converters used for regulated tiers or unregulated purposes should either be deregulated or regulated by the Commission upon complaint. This approach would allow the cable operator to begin charging for new home equipment upon 30 days' advance notice. Any rates which were deemed to be excessive could be challenged in the same way that rates for cable programming services are challenged today, namely, through the complaint process at the Commission. Refunds would accrue from the date of such a complaint.

In the alternative, if the Commission is not prepared to change the regulatory locus of authority over the rates for equipment, the Commission must verify that mid-year filing of an updated Form 1205 with the franchising authority is permissible at such time as new equipment is introduced. In tandem with this suggestion, the Commission could permit the cable operator to institute the proposed charge upon 30 days' notice subject to a refund back to the date upon which the new charge was first imposed. Either of these methodologies would remove the regulatory lag which now pertains and would allow the equipment rate methodology to operate in the same timeframe as the streamlined upgrade cost recovery method.

Respectfully submitted,



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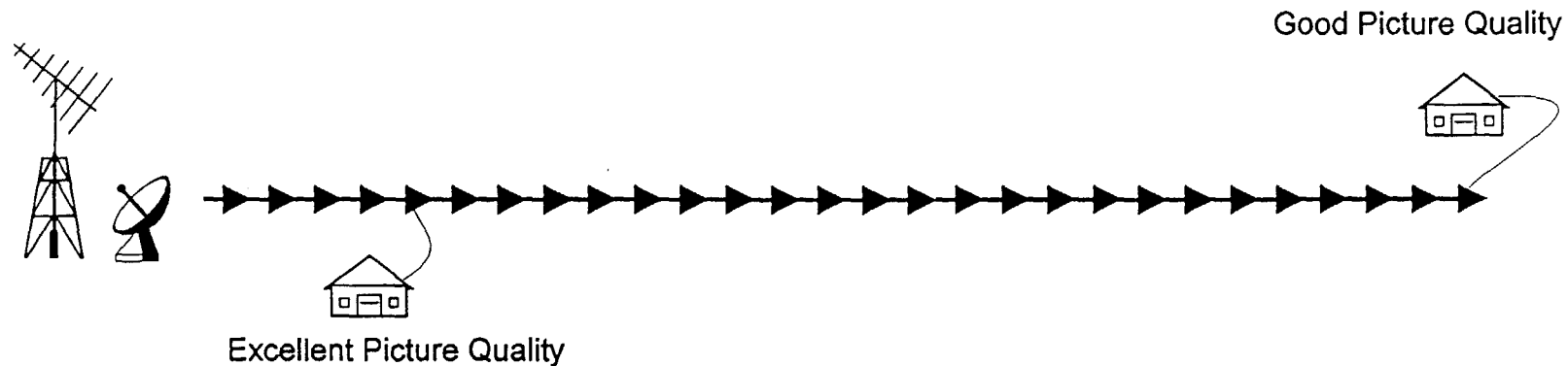
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## TECHNOLOGY COMPARISON (Coaxial Cable Technology)

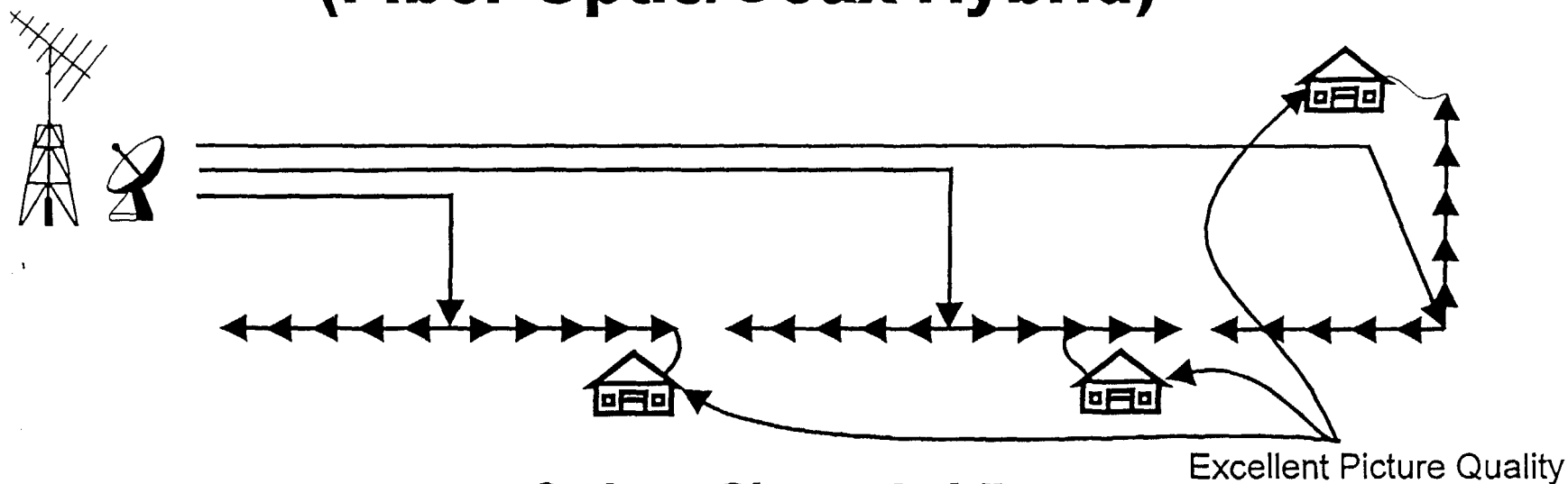


### System Characteristics

- Picture Quality Degrades With Distance From Reception Point
- No Standby Power
- Amplifier or Power Failure Affects Subscribers Beyond Failure.
- Customers at End of System Affected by all Outages
- No Room for Future Services

# TECHNOLOGY COMPARISON

## (Fiber Optic/Coax Hybrid)



### System Characteristics

- Excellent Picture Quality Throughout System
- Standby Power
- Amplifier Failure Affects Single Block Area
- Ready for Future Services (VOD, Interactive, Etc.)
- Bandwidth Architecture Based for Interconnects